IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
Letters Patent Appeal No.439 of 2004
In
Writ Petition No.4349 of 1996

1. M/s.Thermax Limited,)
D-13, MIDC Idustrial Area,)
Chinchwad, Pune - 411 019.)

2. Anu Rohinton Aga,)
Director (Human Resources))
(Presently Chairperson))
Thermax Limited,)
D-13, MIDC Industrial Area,)
Chinchwad, Pune - 411 019.)

3. Shri Kiran P. Gandhi,)
Divisional Manager (OD &Trg.))
D-13, MIDC Industrial Area,)
Chinchwad, Pune - 411 019.) .. Appellants

Vs.

1. C.Gopinath Pillai,)
Flat No.206,)
Sweety Apartments,)
Murugan Nagar, Nigadi,)
Pune - 411 044.)

2. Shri V.A.Garge,)
Member - Industrial Court,)
Pune.)

3. Shri B.M.Khodade,)
Judge, Labour Court-I,)
Pune.) .. Respondents

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Shri S.K.Talsania for the appellants.

Shri R.S.Kulkarni for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &

ANOOP V. MOHTA, JJ.

DATED : 20th JUNE, 2005.

JUDGMENT : (R.M.S.Khandeparkar, J)

1. Heard the learned Advocates for the parties. Perused the records.

2. The present appeal arises from the judgment dated 2nd September, 2004 in Writ Petition No.4349 of 1996 passed by the learned Single Judge. By the impugned judgment, the petition filed by the respondent was allowed and the order passed by the Industrial Court, Pune, on 12th July, 1996 in Revision Application No.16 of 1996 was set aside and the Complaint (ULP) No.240 of 1994 was held maintainable and restored to the file of Labour Court, Pune, simultaneously, it was also held that the respondent is an employee within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act."

3. Few facts relevant for the decision are that

the respondent No.1 was appointed as Stenographer on 1st July, 1981 and subsequently he was promoted as Officer (Training) on 1st July, 1993. On 24th August, 1994, the services of the respondent No.1 came to be terminated. The respondent No.1 filed the complaint under Item Nos.1(a), (b), (c), (d) and (f) and Item No.10 of Schedule IV of the said Act. The appellants contested the proceedings by filing the written statement raising a preliminary issue that the respondent No.1 was not an employee within the meaning of the said expression under the said Act. The evidence was recorded by the parties on the said issue and the Labour Court, Pune, held the respondent No.1 to be a workman within the meaning of the said expression under Section 2(s) of the Industrial Disputes Act, 1947, hereinafter called as "the I.D.Act", and consequently the employee within the meaning of the said expression under Section 3(5) of the said Act. The said order was passed on 18th January, 1996. The matter was carried in revision by the appellants before the Industrial Court, Pune, and by the order dated 12th July, 1996, the Revisional Court upheld the contention of the appellants and dismissed the complaint, while holding that the respondent No.1 had carried out the work of administrative nature. The respondent No.1 challenged

the said order before the learned Single Judge by way of the writ petition which came to be allowed by the impugned judgment. Hence, the present Letters Patent Appeal.

4. The impugned judgment is sought to be challenged on three grounds. Firstly, that the learned Single Judge ought to have considered that it was nobody's case that the respondent was employed to do operational work, and therefore, could not have interfered with the order of the revisional authority on such extraneous grounds which are not borne out from the records as it was neither pleaded nor proved. Secondly that the duties performed by the respondent No.1 were never operational in nature but the same were purely of the administrative nature. Besides, it is settled position in law that the word "operation" having read edusdem jeneris, with other words appearing in the definition of the term workman, it could not have been said that the nature of work performed by the respondent No.1 was operational one. Thirdly, that the learned Single Judge as well as the Labour Court failed to consider that it was necessary for the respondent No.1 to establish that he was the workman within the meaning of the said expression under Section 2(s) of the I.D.Act, as it stood on 1st

February, 1971. On the other hand, the learned Advocate appearing for the respondents while disputing the maintainability of the appeal on the ground that it merely relates to the preliminary issue decided by the Courts below has submitted that though the nature of the work being operational was not pleaded, the same was fully argued before the learned Single Judge, and therefore, no fault can be found with the impugned judgment merely because it was not pleaded. Besides that the materials on record obviously disclose the nature of the work rendered by the respondent No.1 to be that of an operational nature. As regards the point that the respondent No.1 himself had to satisfy that he was an employee within the meaning of the term "workman" as defined under Section 2(s) of the I.D.Act, as it stood on 1st February, 1971 was never raised before the learned Single Judge or in the Memo of Appeal, and therefore, the appellants are not entitled to raise the same, and hence the appeal be dismissed. He has further submitted that the evidence on record clearly justified the order passed by the learned Single Judge and the same does not warrant interference.

5. As regards the contention sought to be raised on behalf of the respondent No.1 that the impugned

order relates to the preliminary issue, and therefore, does not warrant interference, reliance is sought to be placed by the learned Advocate for the respondents in the decision in the matter of **D.P.Maheshwari v. Delhi Administration & Ors.,** reported in 1983 Lab.I.C. 1629. Therein, it was held thus:-

> "the Tribunal entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in disputes at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art.226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art.226 of the Constitution nor the jurisdiction of the Supreme Court under Art.136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art.226 and Art.136 are not meant to

> be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences."

In the facts and circumstances of the case in hand, however, it is too late for the respondent No.1 to seek any assistance from the decision sought to be relied upon. Here is a case where the Labour Court had already entertained and disposed of the preliminary objection and being so, the matter was carried in revision. Being dissatisfied with the order of the Revisional Court, the respondent No.1 approached the High Court wherein the High Court set aside the order of the revisional court and arrived at totally different conclusion as regards the status of the respondent No.1. As the objection which was sought to be raised initially related to the maintainability of the complaint, certainly, though it could have also been considered along with the merits of the case, the Labour Court, Pune, decided to dispose of the said issue independently and before conceding the merits of the case. Further the said

issue having been carried in revision and further in the writ petition, and in the process the status of the respondent No.1 having been finally decided, the decision sought to be relied is of no help to the respondent to non-suit the appellants, at this stage. It would be certainly prejudicial to the appellants not to consider their arguments canvassed in the matter because the issue regarding the status of the respondent No.1, but for this appeal, stands concluded by the impugned decision in the writ petition.

6. That apart, even the materials available on record and also found analysed by the Industrial Court, Pune, nowhere give any indication of the work of operational nature in relation to the services rendered by the respondent No.1. While it was the contention of the respondent No.1 that he was rendering clerical services, the appellants had contended the same to be of administrative nature. However, the fact remains that the services rendered by the respondent No.1 comprised of doing work of a Co-ordinator, Assessor and Organising seminars. There is a clear finding by the Industrial Court that he was not referring any work which could be considered as clerical work. In the background of this factual matrix available on record, one fails to understand

how such work can be labelled as of operational nature. The Industrial Court had, therefore, rightly observed that the same is to be of administrative nature.

7. The question, therefore, arises for our consideration is as to what was the nature of the duties those were rendered by the respondent No.1. It is well settled that the nature of the work would primarily depend upon the duties performed by the employee.

8. The learned Advocate for the appellants is justified in contending that the records nowhere disclose that it was anybody’s case that the nature of work rendered by the respondent No.1 was that of an operational one. Whether the nature of service rendered by the respondent No.1 is operational or not is not the pure question of law. It is a mixed question of law and facts and the parties desiring to raise the said issue had to plead and establish the same by leading the necessary evidence in support of such plea. The said issue having been neither pleaded nor proved before the Labour Court, Pune, nor canvassed before the Industrial Court, it was not permissible for the respondents to raise the issue in

the course of argument before the learned Single Judge and that too without laying any factual foundation in that regard.

9. Undoubtedly, the Labour Court or the Industrial Court, Pune, is the final court of facts in such types of disputes but if a finding of fact happens to be perverse or the same is not based on legal evidence, nothing prevents the High Court in exercise of the powers either under Article 226 or 227 of the Constitution of India from going into the question of fact decided by the Labour Court or the Industrial Court. The law on the point is well settled. However, before going into such an exercise it is absolutely necessary for the writ court to record reasons as to why it intends to reconsider a finding of fact. In the absence of any such defect in the order of the Labour Court, the writ court is not justified in entertaining the petitions involving disputes of facts and finding given thereon. The impugned order passed by the learned Single Judge nowhere discloses any conclusion having been arrived at that the finding of the Industrial Court was either perverse or based on no evidence. The impugned order apparently discloses that it proceeded as if the proceedings were in the nature of appeal. The

judgment rather proceeds to re-assess the entire evidence as if it is sitting in an appeal. Considering the same, it cannot be sustained and is liable to be set aside. It is also to be noted that when the claim of the employee to be a "workman" is disputed, it is necessary to determine the said issue on the basis of the conclusive evidence. It is not sufficient to contend that merely because the employee had been performing any managerial or supervisory duties, ipso facto he would be a workman. In order to entitle to claim to be a workman within the meaning of the said expression, the person has to perform one or the other jobs mentioned in the said provision and the same should be established by the evidence to be produced by a person claiming the same. Only on the analysis of such evidence, it is to be ascertained whether the claimant discloses any of the jobs specified in the said provisions being carried out by him.

10. Perusal of the materials on record, therefore, as already observed above, nowhere discloses any clerical duties having been carried out by the respondent No.1. The duties performed by the respondent No.1 discloses the same to be of administrative nature as the same comprised of holding

or organising seminars and training courses for the employees. Certainly, merely because that he has no power to perform some of the managerial duties, that by itself would not be sufficient to classify such person to be a workman. The appellants are therefore justified in contending that the impugned order is bad in law and is therefore liable to be quashed and set aside by restoring the judgment delivered by the Industrial Court, Pune, in the revision application.

11. As regards the contention that the learned Single Judge proceeded on the basis of the definition of the "workman" to be found in Section 2(s) of the Central Act on the date on which the judgment was delivered by the learned Single Judge i.e. 2nd September, 2004, and not as per the definition as was found on the day the said Act came into force, it is not necessary to deal with the said issue in this matter, and hence it is not necessary to deal with the decisions relied upon in relation to the said point.

12. In the result, therefore, the appeal succeeds. The impugned order is hereby quashed and set aside and the order passed by the Industrial Court, Pune, in Revision Application No.16 of 1996 is hereby restored. There shall be no order as to costs.

(R.M.S.Khandeparkar, J)

(Anoop V. Mohta, J)